

REMARKS

This responds to the Office Action dated March 6, 2008. Claims 1, 11, 18, 19, and 43 are amended. No claims are canceled or added. As a result, claims 1-9, 11-32, and 34-48 remain pending in this application.

Applicant respectfully submits that the amendments to the claims are fully supported by the specification, as originally filed, and no new matter has been added. Applicant hereby respectfully requests further examination and reconsideration of the application in view of the following remarks.

Telephone Interview

Applicant thanks Examiner Flory for the courtesies extended in conducting a telephone interview with Applicant's representatives, Suneel Arora and Michael P. Horvath, on June 27, 2008. During the telephone interview, Applicant's representatives discussed proposed amendments to the claims with respect to the rejections of record. Such proposed amendments have now been included in the listing of claims herein. The Examiner indicated that the proposed amendments to the claims would seem to overcome the rejections and art of record. However, the Examiner reserved the possibility of performing a further search.

§103 Rejection of the Claims

1. Claims 1-6, 16, and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Siegel (U.S. Patent No. 5,062,841) in view of Hemmingsson (U.S. Patent No. 6,421,565) or in view of Nappholz et al. (U.S. Patent No. 5,188,106). Applicant respectfully traverses this rejection in view of at least the foregoing amendment and the following remarks.

For instance, Applicant cannot find in the references, in combination with the reasoning of the Office Action "a physiological sensor that includes at least one biocompatible body, the body sized and shaped to be implanted into and within a myocardial wall of a subject", as recited in amended claim 1.

Siegel apparently relates to an "implantable pump for the delivery of insulin". (Siegel at Abstract.) Siegel states that the pump includes a "cylindrical housing 5 cm in length with a circular internal base area of 2 cm² . . . [made] from a suitable rigid material such as

polymethylmethacrylate.” (Siegel at col. 12, lines 65-67.) The Office Action contends at page 5 that “the disclosed size of 5cm by 2cm . . . is considered to be a size capable of being implanted within a myocardium, for example within one of the ventricular cavities.” However, Applicant respectfully submits that the described Siegel device is too large to fit into and within a myocardial wall. As such, Applicant respectfully submits that Siegel does not appear to show a “body sized and shaped to be implanted into and within a myocardial wall of a subject”, as presently recited in claim 1. For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning set forth in the Office Action, do not show each and every recitation of claim 1.

Claims 2-6, 16, and 17 depend from and incorporate the features of independent claim 1. Therefore, Applicant submits that claims 2-6, 16, and 17 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from claim 1, which is believed to be in condition for allowance for at least the reasons stated above.

For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 1-6, 16, and 17. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-6, 16, and 17.

2. Claims 1-7, 11-17, 19-29, 37, 43, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lew et al. (U.S. Patent Application Publication No. 2003/0100822) in view of Hemmingsson or in view of Nappholz. Applicant respectfully traverses this rejection in view of at least the foregoing amendment and the following remarks.

For instance, Applicant cannot find in the references, in combination with the reasoning of the Office Action:

- “a physiological sensor that includes at least one biocompatible body, the body sized and shaped to be implanted into and within a myocardial wall of a subject”, as recited in amended claim 1;
- “introducing a physiological sensor into and within a myocardial wall of a subject”, as recited in amended claim 19; or

- “a physiological sensor that includes one or more biocompatible bodies, the one or more bodies sized and shaped to be implanted into and within a myocardial wall of a subject”, as recited in amended claim 43.

The Office Action contends at page 6 that “Lew’822 is considered to clearly disclose the invention as claimed”, only admitting that “Lew’822 does not expressly disclose that the ultrasound transducer is implantable.”

However, Lew apparently relates to an “implantable chip biosensor for detecting an analyte in vivo in body fluids”. (Lew at Abstract.) Lew states that “[t]he ultrasound scanner 15, FIG. 1, is designed to measure the glucose concentration based on the length displacement of the glucose-sensitive filament in the biosensor chip 10 implanted under the subcutaneous layer of human skin.” (Lew at page 7, paragraph [0090]; and Fig. 1.) Lew further states that “the lengthwise dimension Y is between about 0.2 cm and about 2 cm, more preferably between about 0.2 cm and about 1 cm, and Y is between about 5 and about 50 times each of X and Z. For example, when Y is 1 cm and each of X and Z is 1/10 times of Y, the width and depth are 0.1 cm.” (Lew at page 8, paragraph [0101].)

Applicant respectfully submits that the described Lew device is too large to fit into and within a myocardial wall. As such, Applicant respectfully submits that Lew does not appear to show a “body sized and shaped to be implanted into and within a myocardial wall of a subject”, as presently recited in claim 1 or as similarly recited in claims 19 and 43. For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning set forth in the Office Action, do not show each and every recitation of claims 1, 19, and 43.

Claims 2-7, 11-17, and 37 depend from and incorporate the features of independent claim 1; claims 20-29 depend from and incorporate the features of independent claim 19; and claim 46 depends from and incorporates the features of independent claim 43. Therefore, Applicant submits that claims 2-7, 11-17, 20-29, 37, and 46 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 1, 19, and 43, which are believed to be in condition for allowance for at least the reasons stated above.

For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the

subject matter of claims 1-7, 11-17, 19-29, 37, 43, and 46. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 11-17, 19-29, 37, 43, and 46.

3. Claims 1-7, 9, 11-17, 19-29, 31, 32, 35, 36, 38, and 43-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Altman et al. (U.S. Patent No. 6,296,630) in view of Lew and further in view of Siegel as applied above; still further in view of Hemmingsson or Nappholz. Applicant respectfully traverses this rejection in view of at least the foregoing amendment and the following remarks.

For instance, Applicant cannot find in the references, in combination with the reasoning of the Office Action:

- “a physiological sensor that includes at least one biocompatible body, the body sized and shaped to be implanted into and within a myocardial wall of a subject”, as recited in amended claim 1;
- “introducing a physiological sensor into and within a myocardial wall of a subject”, as recited in amended claim 19; or
- “a physiological sensor that includes one or more biocompatible bodies, the one or more bodies sized and shaped to be implanted into and within a myocardial wall of a subject”, as recited in amended claim 43.

The Office Action contends that Altman et al. “discloses an implantable cardiac drug delivery system for delivery agents to be introduced within the myocardium of a subject”. However, Applicant cannot find any description in Altman et al. of a body sized and shaped to be implanted into and within a myocardial wall of a subject.

Instead, Altman et al. apparently relates to “[i]mplantable cardiac drug delivery systems.” (Altman et al. at Abstract.) Altman et al. appears to describe and show various configurations of epicardial drug delivery patches. (See Altman et al., col. 11, lines 41-59; col. 15, line 41 – col. 16, line 5; and Figs. 2A and 2K.) As such, it does not appear that Altman et al. describes a body sized and shaped to be implanted into and within a myocardial wall. For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning set forth in the Office Action, do not show each and every recitation of claims 1, 19, and 43.

Claims 2-7, 9, 11-17, and 38 depend from and incorporate the features of independent claim 1; claims 20-29, 31, 32, 35, and 36 depend from and incorporate the features of independent claim 19; and claims 44-46 depend from and incorporate the features of independent claim 43. Therefore, Applicant submits that claims 2-7, 9, 11-17, 20-29, 31, 32, 35, 36, 38, and 44-46 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 1, 19, and 43, which are believed to be in condition for allowance for at least the reasons stated above.

For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 1-7, 9, 11-17, 19-29, 31, 32, 35, 36, 38, and 43-46. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 9, 11-17, 19-29, 31, 32, 35, 36, 38, and 43-46.

4. Claims 8, 18, 30, and 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lew in view of Hemmingsson or in view of Nappholz as applied to claims 1 and 19 above, and further in view of Widder (U.S. Patent No. 4,345,588). Applicant respectfully traverses this rejection in view of at least the foregoing amendment and the following remarks.

For instance, Applicant cannot find in the references, in combination with the reasoning of the Office Action, “a plurality of biocompatible spheres, each sphere sized and shaped to be introduced into and within a myocardial wall of a subject”, as recited in amended claim 18.

The Office Action at page 11 contends that “Lew’822 in view of Hemmingsson’565 or in view of Nappholz’106 is considered to disclose the invention substantially as claimed . . . but does not expressly disclose that the body comprise a plurality of chronically placed biocompatible microspheres.” However, for at least reasons similar to those stated above, Applicant submits that the described Lew device is too large to fit into and within a myocardial wall. As such, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to show “a plurality of biocompatible spheres, each sphere sized and shaped to be introduced into and within a myocardial wall of a subject”, as presently recited in claim 18. For at least these reasons, Applicant respectfully submits that the

references, in combination with the reasoning set forth in the Office Action, do not show each and every recitation of claim 18.

Claim 8 depends from and incorporates the features of independent claim 1; claims 40-42 depend from and incorporate the features of independent claim 18; and claim 30 depends from and incorporates the features of independent claim 19. Therefore, Applicant submits that claims 8, 30, and 40-42 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 1, 18, and 43, which are believed to be in condition for allowance for at least the reasons stated above.

For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 8, 18, 30, and 40-42. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8, 18, 30, and 40-42.

5. Claims 8, 18, 30, and 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Altman in view of Lew, further in view of Siegel, still further in view of Hemmingsson or Nappholz as applied to claims 1 and 19 above, and further in view of Widder. Applicant respectfully traverses this rejection in view of at least the foregoing amendment and the following remarks.

For instance, Applicant cannot find in the references, in combination with the reasoning of the Office Action “a plurality of biocompatible spheres, each sphere sized and shaped to be introduced into and within a myocardial wall of a subject”, as recited in amended claim 18.

The Office Action at page 11 contends that “Altman’630 is considered to disclose the invention substantially as claimed . . . but does not expressly disclose that the body comprise a plurality of chronically placed biocompatible microspheres.” However, for at least reasons similar to those stated above, Applicant submits that it does not appear that Altman et al. describes a body sized and shaped to be implanted into and within a myocardial wall. For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning set forth in the Office Action, do not show each and every recitation of claims 18.

Claim 8 depends from and incorporates the features of independent claim 1; claims 40-42 depend from and incorporate the features of independent claim 18; and claim 30 depends from

and incorporates the features of independent claim 19. Therefore, Applicant submits that claims 8, 30, and 40-42 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 1, 18, and 43, which are believed to be in condition for allowance for at least the reasons stated above.

For at least these reasons, Applicant respectfully submits that the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 8, 18, 30, and 40-42. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8, 18, 30, and 40-42.

6. Claims 34, 47, and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lew in view of Hemmingsson or in view of Nappholz as applied to claims 19 and 43 above, and further in view of Sutton et al. (U.S. Patent No. 6,348,186). Applicant respectfully submits that obviousness does not presently exist because the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 34, 47, and 48.

Claim 34 depends from and incorporates the features of independent claim 19; and claims 47 and 48 depend from and incorporate the features of independent claim 43. Accordingly, claims 34, 47, and 48 each incorporate the features of one of claims 19 and 43. Therefore, Applicant submits that claims 34, 47, and 48 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 19 and 43, which are believed to be in condition for allowance for at least the reasons stated above.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 34, 47, and 48.

Allowable Subject Matter

Claim 39 was objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 39 depends from claim 1, which, for at least the reasons stated above, is believed to be in condition for allowance. Therefore, Applicant

respectfully submits that the claim 39 is allowable in its present form, and Applicant respectfully requests allowance of the claim 39.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any canceled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this ____ day of July 2008.

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